

## Message Text

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62 R  
ORIGIN NEA-10

INFO OCT-01 ISO-00 PM-03 SS-15 SSO-00 NSCE-00 NSC-05 L-03

H-02 DODE-00 CIAE-00 INR-07 NSAE-00 INRE-00 SP-02

( ISO ) R

DRAFTED BY NEA/ARN:DDEAN:JFC/L/PM:JHMICHEL

APPROVED BY NEA/ARN - MR. DAY

T - W. LEWIS

DSAA - LT. GEN FISH

PM - MR. STERN

S/S-O: J. HOGANSON

OSD/ISA - MR. FOREMAN

OSD/ISA - COL. PRADOS

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O 030131Z JUL 75

FM SECSTATE WASHDC

TO AMEMBASSY AMMAN IMMEDIATE

C O N F I D E N T I A L STATE 156943

E.O. 11652: GDS

TAGS: MASS, US, JO

SUBJECT: ROSENTHAL RESOLUTION

REF: AMMAN 4391

AGENT FEES:

1. THE INFORMATION PROVIDED CONGRESS CONCERNING 2 PER CENT AGENT FEE WAS FURNISHED IN RESPONSE TO DIRECT QUESTION ABOUT FEES AND SALES COMMISSIONS PAYABLE BY ANY ENTITY INVOLVED IN THE SALE TO ANY PERSON. THE TEXT OF THE QUESTION AND ITS RESPONSE HAVE BEEN SENT SEPTEL. IN ESSENCE, THE ANSWER WAS AS FOLLOWS: RAYTHEON'S PROPOSAL STATED THAT THE COMPANY HAS AGREEMENTS WITH REPRESENTATIVES OF JOR-CONFIDENTIAL

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DANIAN NATIONALITY TO PAY FEE OF 2 PER CENT OF CONTRACT PRICE (THE FEE IS INCLUDED IN THE PROPOSAL AS 2 PER CENT OF THE "NOT TO EXCEED" PRICE). NAMES OF THE PERSONS ACTING AS REPRESENTATIVES ON BEHALF OF RAYTHEON HAVE NOT

BEEN FURNISHED BY THE COMPANY. THE QUESTION OF WHETHER THESE COSTS ARE PROPERLY ALLOWABLE WILL BE RESOLVED BY CONTRACTING OFFICER DURING CONTRACT NEGOTIATIONS.

2. RAYTHEON HAS WITHIN PAST YEAR SIGNED CONTRACT WITH A JORDANIAN REGISTERED AGENT. ARMED SERVICES PROCUREMENT REGULATIONS ALLOW CONTRACTOR TO RECOVER AMOUNTS PAID AS REASONABLE FEE TO BONA FIDE AGENT. IN DETERMINING WHETHER FEE IS REASONABLE, DEPARTMENT OF THE ARMY EXAMINES WHETHER FEE IS COMMENSURATE WITH NATURE AND EXTENT OF SERVICES PROPOSED BY AGENT AND COMPARES FEE WITH THOSE CUSTOMARILY PAID ON DIRECT COMMERCIAL SALES OF SAME OR SIMILAR ITEMS. ARMY MAY, AT TIME OF CONTRACT NEGOTIATIONS, DISALLOW PART OR ALL OF FEE OR LET ENTIRE FEE STAND. IF DOD CANNOT DETERMINE WHETHER FEE IS REASONABLE, IT ELICITS VIEWS OF PURCHASING GOVERNMENT. IF RAYTHEON ACTUALLY INCURS COSTS FOR REASONABLE AGENTS FEE, IT IS ENTITLED TO REIMBURSEMENT FROM USG TO EXTENT FEE IS ALLOWABLE UNDER ABOVE DESCRIBED REGULATION. IN THAT EVENT, GOJ WOULD BE OBLIGED UNDER LOA TO REIMBURSE USG FOR SUCH AMOUNT. GOJ LIABILITY TO USG AND USG LIABILITY TO RAYTHEON COULD BE AVOIDED ONLY IF US ARMY CONTRACT WITH RAYTHEON PRECLUDED ALL FEES. SUCH A CONTRACT PROVISION, HOWEVER, WOULD NOT NECESSARILY RELIEVE RAYTHEON OF LIABILITY TO AGENT UNDER ITS CONTRACT WITH HIM. DOD IS EXPLORING THIS QUESTION WITH RAYTHEON AND FURTHER DETAILS WILL FOLLOW BY SEPTTEL.

3. IN VIEW OF GOJ'S WISH TO AVOID PAYING SUCH FEES ON FUTURE FMS CASES (PARA 1B REFTTEL), THEY MAY SEND LETTER THRU USDAO AMMAN TO OFFICE OF THE SECRETARY OF DEFENSE ASKING THAT SECDEF EXCLUDE AGENT FEES FOR ALL FUTURE FMS QUOTATIONS UNLESS DISCLOSED TO AND APPROVED BY GOJ IN ADVANCE. THIS COULD PROVIDE BASIS FOR AMENDING EXISTING REGULATION.

4. REFTTEL MENTIONS IRRITATION THAT WE TOLD CONGRESS  
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ABOUT COMMISSION WHILE NOT YET REPORTING PRICE OF HAWK SYSTEM TO JORDANIANS. THE TWO ELEMENTS ARE NOT REALLY COMPARABLE. AGENT FEE WAS INCLUDED IN RAYTHEON PROPOSAL, AT EARLIER STAGE OF PROCESS, WHILE PRICES ARE NOT QUOTED UNTIL LOA IS DRAWN UP TO INSURE PRICE ESTIMATES ARE AS ACCURATE AS POSSIBLE AND BECAUSE OF POSSIBILITY THAT EARLIER QUOTATION WOULD BE OVERTAKEN BY PRICE INCREASES. WE PLAN TO PRESENT LOA INFORMATION TO CONGRESS ABOUT 11 JULY TO ALLOW 20 DAYS REQUIRED BY LAW FOR CONGRESSIONAL REVIEW.

CONTACT WITH JORDANIANS:

5. ASST. SECY. ATHERTON, IN CONVERSATION WITH JORDANIAN

AMB. SALAH AND JORDANIAN MILITARY ATTACHE OVER WEEK-END,  
WAS ASKED ABOUT ROSENTHAL RES. HE VENTURED JUDGMENT THAT  
ROSENTHAL WOULD NOT SUCCEED WITH HIS RESOLUTION. INGERSOLL

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<< END OF DOCUMENT >>

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 26 AUG 1999  
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